

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 14, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RYANNE C,¹

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner of
Social Security,

Defendant.

No. 1:24-cv-03023-EFS

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

Due to depression, anxiety, bipolar disorder, attention deficit hyperactivity disorder (ADHD), post-traumatic stress disorder (PTSD), learning disorder, nausea and stomach issues, dissociative identity disorder, and gender dysphoria, Plaintiff Ryanne C. claims that he is unable to work fulltime and appeals the

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c). Because Plaintiff is transgender, the Court refers to Plaintiff using the pronouns he/his/him.

1 redetermination of his childhood supplemental security income benefits. He
2 appeals the denial of benefits by the Administrative Law Judge (ALJ) on the
3 grounds that the ALJ improperly analyzed the opinions of the state agency
4 consultants and consultative examiners, erred in failing to properly perform the
5 Psychiatric Review Technique at step two, and erred in her consideration of
6 Plaintiff's subjective complaints. As is explained below, the ALJ erred in her
7 consideration of the medical opinions and failed to develop the record properly by
8 obtaining medical expert testimony. This matter is remanded for further
9 proceedings.

10 **I. Background**

11 In April 2018, Plaintiff's guardian filed an application for benefits under
12 Title 16, and Plaintiff was found disabled by ALJ Blanton in March 2020, due to
13 meeting Listing 112.04, 112.11, and 112.15.² Plaintiff's claim was reviewed after he
14 turned 18 and he was found to be no longer disabled as of August 30, 2021, by a
15 hearing officer.³

16 After Plaintiff appealed the hearing officer's decision, ALJ Evangeline
17 Mariano-Jackson held a telephone hearing in March 2023, at which Plaintiff
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21 ² AR 130, 444.

22 ³ AR 333.

1 appeared with his representative and testified.⁴ A vocational expert also appeared
2 and testified.⁵

3 Plaintiff testified that he had completed high school but his attorney later
4 explained that he had obtained a GED.⁶ Plaintiff confirmed that he was enrolled in
5 college in fall 2022, but had failed all his classes.⁷ He said he was currently
6 enrolled but only taking two classes, one of which was an “easy class.”⁸ He said he
7 was supposed to take three classes but had to drop one because he was failing.⁹ He
8 said he was getting a B or C in the health class and was failing the math class.¹⁰
9 He was on academic warning and was not sure he could go back for spring.¹¹
10 Plaintiff stated that he did not think he could work because he was mentally
11 drained and not able to get out of bed due to his bipolar disorder.¹²
12
13

14 ⁴ AR 75-106.

15 ⁵ *Id.*

16 ⁶ AR 80-81.

17 ⁷ AR 83.

18 ⁸ *Id.*

19 ⁹ AR 83-84.

20 ¹⁰ AR 84.

21 ¹¹ *Id.*

22 ¹² AR 85.

1 Plaintiff said he is supposed to go to classes daily but at times only goes once
2 or twice a week and that his activities are limited to eating and doing homework.¹³
3 He said he had stopped his medication because it was making his condition
4 worse.¹⁴ He said that he had not seen his doctor since fall of the prior year and that
5 his doctor was not returning his calls.¹⁵ He said that he did his homework online
6 and that he was homeless because he had gotten evicted from his apartment but
7 was living on campus.¹⁶ He does not have a driver's license because he could not
8 pass the written test.¹⁷ When he needs to go somewhere, he will ask his
9 grandfather for a ride.¹⁸ Plaintiff testified that he was still taking his anxiety and
10 ADHD medications but had stopped taking his bipolar medication.¹⁹ Plaintiff said
11 he found out the medication was a mood stabilizer and not a bipolar medication
12 and that it was not working.²⁰
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15 ¹³ *Id.*

16 ¹⁴ *Id.*

17 ¹⁵ AR 86.

18 ¹⁶ AR 86-87.

19 ¹⁷ AR 87.

20 ¹⁸ AR 87-88.

21 ¹⁹ AR 88.

22 ²⁰ AR 89.

1 Plaintiff said that physically he had pain in his back, knees, ankles, and
2 fingers from fibromyalgia and that the pain differed but was worse in cold or hot
3 weather.²¹ He said that ice or heat will at times help with pain and at times
4 nothing will help.²² He said that he was taking medication for that but when his
5 doctor changed he was no longer prescribed the medications.²³ When he has
6 anxiety, he will shut down and either hyperventilate or pass out and that this
7 happens when high stress situations trigger trauma.²⁴ He said he will have a fight
8 or flight response and either run away or yell and get into a physical altercation.²⁵
9 He has gotten into fights with both friends and strangers.²⁶ He said that he takes
10 ADHD medication but still has trouble focusing for more than a few minutes on his
11 homework.²⁷ Without medication he cannot focus at all.²⁸ Plaintiff said that his
12 uncle got him a job in sanitation but he lost it because he did not show up for a
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15 ²¹ *Id.*

16 ²² AR 90.

17 ²³ *Id.*

18 ²⁴ AR 90-91.

19 ²⁵ AR 91.

20 ²⁶ *Id.*

21 ²⁷ AR 92.

22 ²⁸ *Id.*

1 week of work because he was in pain.²⁹ He thought that if he was working he
2 would still have problems going into work.³⁰ Currently his only side effect of
3 medication is decreased appetite but in the past he had taken Abilify and it caused
4 a nervous tick.³¹ He has had suicidal thought and self-harm and currently he will
5 burn himself in the shower and will pick at his skin.³² He said he has suicidal
6 thought daily.³³

7 Plaintiff testified that since October 2022 he was in a counseling workshop
8 at student counseling.³⁴ He stopped going to the counseling workshop but was still
9 in counseling with Comprehensive Health Care and he was also in a program for
10 domestic violence survivors.³⁵

16 ²⁹ AR 93.

17 ³⁰ AR 93-94.

18 ³¹ AR 94.

19 ³² AR 94-95.

20 ³³ AR 95.

21 ³⁴ AR 95-96.

22 ³⁵ AR 96.

1 After the hearing, the ALJ issued a decision denying benefits.³⁶ The ALJ
 2 found Plaintiff's alleged symptoms were not entirely consistent with the medical
 3 evidence and the other evidence.³⁷ As to medical opinions, the ALJ found:

- 4 • The opinions of state agency evaluators Merry Alto, MD, and Nevine
 5 Makari, MD, to be partially persuasive.
- 6 • The opinions of consultative examiner Patrick Metoyer, PhD, to be
 7 persuasive.
- 8 • The opinions of state agency evaluators Michel Brown, PhD, and
 9 Renee Eisenhauer, PhD, to be persuasive.³⁸

10 The ALJ also considered the third-party statement of Plaintiff's grandfather,
 11 Michael M., and high school guidance counselor Mindy Faber.³⁹

12 As to the sequential disability analysis, the ALJ found:

- 13 • Step one: Plaintiff was notified that he was found no longer disabled
 14 as of August 30, 2021, based on a redetermination of disability for
 15 adults who file new applications.

18 ³⁶ AR 33-58. Per 20 C.F.R. § 416.920(a)–(g), a five-step evaluation determines
 19 whether a claimant is disabled.

20 ³⁷ AR 41-44.

21 ³⁸ AR 44-46.

22 ³⁹ AR 44.

- Step two: Plaintiff had the following medically determinable severe impairments: scoliosis; fibromyalgia; bipolar disorder; major depressive disorder; anxiety; ADHD; specific learning disorder in reading, writing and math; PTSD; and gender dysphoria.
- Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments with consideration of Listing 1.15, 1.1622, 14.09, 12.04, 12.06, 12.11, and 12.15.
- RFC: Plaintiff had the RFC to perform light work with the following exceptions:

[Plaintiff] can never work in extreme cold; can understand, remember, and carry out simple, routine, and repetitive tasks requiring no more than 1-2-3 step instructions and involving only simple work-related decisions and occasional decision making and changes in the work setting; can never perform assembly line work; can tolerate occasional interaction with coworkers and the public.
- Step four: Plaintiff has no past relevant work.
- Step five: as an alternative finding, considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as a garment sorter (DOT 222.687-014), a router (DOT 222.587-038), and a marker II (DOT 920.687-126).⁴⁰

⁴⁰ AR 38-47.

1 Plaintiff timely requested review of the ALJ's decision by the Appeals
2 Council and now this Court.⁴¹

3 II. Standard of Review

4 The ALJ's decision is reversed "only if it is not supported by substantial
5 evidence or is based on legal error,"⁴² and such error impacted the nondisability
6 determination.⁴³ Substantial evidence is "more than a mere scintilla but less than a
7 preponderance; it is such relevant evidence as a reasonable mind might accept as
8 adequate to support a conclusion."⁴⁴

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10 ⁴¹ AR 440.

11 ⁴² *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. § 405(g).

12 ⁴³ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012), *superseded on other*
13 *grounds by* 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an
14 ALJ decision due to a harmless error—one that "is inconsequential to the ultimate
15 nondisability determination").

16 ⁴⁴ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.
17 1997)). *See also* *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The
18 court "must consider the entire record as a whole, weighing both the evidence that
19 supports and the evidence that detracts from the Commissioner's conclusion," not
20 simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*,
21 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does
22 not indicate that such evidence was not considered[.]").
23

III. Analysis

Plaintiff seeks relief from the denial of disability on three grounds. He argues the ALJ erred at step three because she failed to adequately articulate her analysis of the Psychiatric Review Technique at step three, erred when evaluating the medical opinions, and erred in her assessment of Plaintiff's testimony. As is explained below, the Court concludes that the ALJ consequentially erred at step three and erred in her evaluation of the medical opinion evidence.

A. Step Two/Three (Listings): Plaintiff has established consequential error.

Plaintiff contends the ALJ failed to properly perform the Psychiatric Review Technique at step three and that the error tainted the ALJ's analysis of the listings and the medical opinion evidence. The Commissioner argues that the ALJ reasonably concluded that Plaintiff's impairments did not meet or equal a listing. The Court agrees with Plaintiff that the ALJ failed to properly articulate her reasoning when performing the Psychiatric Review Technique.

1. Standard

If a claimant meets all of the listing criteria or if his impairments medically equal a listed impairment, he is considered disabled.⁴⁵ Medical equivalence will be

⁴⁵ See *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990) (requiring a claimant to show that the impairment meets (or medically equals) all of the specified medical criteria, not just some of the criteria).

1 found if the medical findings are at least of equal medical significance to the
2 required criteria.⁴⁶ “[I]n determining whether a claimant equals a listing under
3 step three . . . the ALJ must explain adequately his evaluation of alternative tests
4 and the combined effects of the impairments.”⁴⁷

5 When a claimant has presented a “colorable claim” of mental impairment,
6 the ALJ is required “to follow a special psychiatric review technique.”⁴⁸ Once a
7 colorable claim of mental impairment is made, the ALJ must then determine
8 whether a claimant has a medically severe impairment or combination of
9 impairments at step two of the disability determination, and the ALJ is bound by
10 20 C.F.R. § 416.920a.⁴⁹ Under 20 C.F.R. § 416.920a, the ALJ is required to perform
11 a “special psychiatric review technique,” “rate the degree of functional limitation
12 for four functional areas,” “determine the severity of the mental impairment (in
13 part based on the degree of functional limitation), ... and then, if the impairment is
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17 ⁴⁶ 20 C.F.R. § 416.926(d)(3); *Marcia v. Sullivan*, 900 F.2d 172, 175 (9th Cir. 1990).

18 ⁴⁷ *Marcia*, 900 F.2d at 176; *see also Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001)
19 (The ALJ “must evaluate the relevant evidence before concluding that a claimant’s
20 impairments do not meet or equal a listed impairment.”).

21 ⁴⁸ *Keyser v Comm. Soc. Sec. Admin.*, 648 F.3d 721, 725 (9th Cir. 2011)

22 ⁴⁹ *Id.*
23

1 severe, proceed to step three of the disability analysis to determine if the
2 impairment meets or equals a specific listed mental disorder.”⁵⁰

3 “The primary purpose of the final rules is to describe the technique, as
4 distinct from the [PRT Form], and to require the use of the technique in all
5 determinations and decisions at all levels of the administrative review process.....

6 In other words, the regulations contemplate that written decisions at the ALJ and
7 Appeals Council levels should contain a “narrative rationale,” instead of the
8 “checklist of ... conclusions” found in a PRTF.”⁵¹

21 ⁵⁰ *Id.*

22 ⁵¹ *Id.*

1 2. The ALJ's findings

2 The ALJ articulated the following reasoning as to her consideration of the
3 Psychiatric Review Technique:

4 The severity of the claimant's mental impairments, considered singly
5 and in combination, do not meet or medically equal the criteria of
6 listings 12.04, 12.06, 12.11, and 12.15. In making this finding, I have
7 considered whether the "paragraph B" criteria are satisfied, which are
8 the four broad functional areas set out in the disability regulations for
9 evaluating mental disorders and in section 12.00C of the Listing of
10 Impairments (20 CFR, Part 404, Subpart P, Appendix 1). To satisfy the
11 "paragraph B" criteria, the mental impairments must result in at least
12 two "marked" limitations or one "extreme" limitation in a broad area of
13 functioning: 1) understanding, remembering, or applying information;
14 2) interacting with others; 3) concentrating, persisting, or maintaining
15 pace; or 4) adapting or managing themselves. A marked limitation
16 means functioning in this area independently, appropriately,
17 effectively, and on a sustained basis is seriously limited. An extreme
18 limitation is the inability to function independently, appropriately, or
19 effectively, and on a sustained basis.

20 Based on the totality of the medical evidence of record, the claimant has
21 moderate limitations in all four broad functional areas. *As discussed in*
22 *more detail later in this decision*, he can perform routine daily activities
23 but has difficulty with remembering, focusing, and concentrating in
24 order to persist at tasks. He can interact appropriately with others the
25 greater part of the time but will have difficulty when experiencing
26 increased pain, stress, or feelings of anxiety. Although his chronic pain
27 and variable mood affects his functioning at times, there is no evidence
28 that he is unable to adequately regulate his emotions and control
29 behavior. (See e.g., Exhibits B14F/4-5; B20F/4-5; B26F/3-5, 23-25;
30 B28F/11, 35, 90, 118; B29F/7).⁵²

31 3. Analysis

32 The ALJ's analysis was boilerplate and flawed. First, the ALJ made a
33 conclusory finding that Plaintiff's limitations in the four functional areas was
34 moderate and stated that her findings were discussed in more detail later in the
35 decision. While it would not have been improper for the ALJ to make specific

1 findings as to the four functional areas later in the decision and incorporate them
2 in this manner, she failed to do so. At no point later in the decision did the ALJ
3 properly articulate in any narrative paragraph her findings as to the four
4 functional areas as to the record as a whole.

5 In the language in which the ALJ addresses the four functional areas, she
6 clearly identified the second functional area as it pertained to interacting with
7 others, as well as the fourth functional area of adapting or managing oneself.⁵³ But
8 her language as to the other two functional areas is vague and unclear and does
9 not indicate that she considered the functional area of understanding,
10 remembering, or applying information adequately nor did she articulate specific
11 findings as to the functional area of concentrating, persisting, or maintaining pace.

12 In this instance the ALJ's failure to articulate her reasoning as to the
13 functional area of concentrating, persisting, and maintaining pace is consequential
14 because Plaintiff argues that when considering the medical opinions, the ALJ
15 found the opinions of Dr. Metoyer, Dr. Brown, and Dr. Eisenhower to be persuasive
16 but included no provision in the RFC for attendance although all three found at
17 least moderate limitations in the ability to maintain attendance, which is an
18 activity considered in the third functional area of concentrating, persisting, and
19 maintaining pace.

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22 ⁵³ *Id.*
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1 4. Summary

2 The ALJ's failure to properly articulate her reasoning at step two/three
3 regarding the Psychiatric Review Technique was consequential. The ALJ did not
4 offer sufficient analysis in later portions of the decision to permit the Court to
5 meaningfully review the ALJ's finding, and there is a question whether the
6 underlying record contains sufficient evidence to support the ALJ's findings as to
7 one of the four functional areas.⁵⁴ For that reason the Court concludes that
8 remand is warranted.

9
10 **B. Medical Opinion: Plaintiff establishes consequential error.**

11 Plaintiff argues the ALJ erred in her evaluation of the medical opinions
12 regarding Plaintiff's mental impairments.⁵⁵ Plaintiff argues that the ALJ erred
13 because she found that Dr. Metoyer's opinion was persuasive but failed to provide
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15 ⁵⁴ *Molina*, 674 F.3d at 1112; SSR 17-2p; *see also Bray v. Comm'r of Soc. Sec. Adm.*,
16 554 F.3d 1219, 1226-27 (9th Cir. 2009) (recognizing that the ALJ's decision must be
17 analyzed based on his reasoning and findings and "not *post hoc* rationalizations
18 that attempt to intuit what the adjudicator may have been thinking").

19 ⁵⁵ An ALJ must consider and articulate how persuasive she found each medical
20 opinion, including whether the medical opinion was consistent with and supported
21 by the record. 20 C.F.R. § 416.920c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th
22 Cir. 2022).

1 in the RFC for any limitation in maintaining attendance and completing a normal
2 work week without interruption and failed to adequately provide for Dr. Metoyer's
3 opined limitation handling stress if in persistent contact with others by limiting
4 Plaintiff to occasional contact with others.⁵⁶ He also argues that the ALJ erred by
5 failing to properly articulate the supportability factor when considering Dr. Brown
6 and Dr. Eisenhower's opinions.⁵⁷ The Commissioner counter argues that Plaintiff
7 did not show that the ALJ was required to provide additional limitations to account
8 for a moderate limitation in maintaining attendance, that the plain meaning of the
9 word "persistent" is more than occasional and that the ALJ's statement that
10 Dr. Brown and Dr. Eisenhower's opinions were supported by a thorough view of the
11 record satisfied the supportability factor.⁵⁸ The Court agrees in part with Plaintiff
12 and in part with the Commissioner.

13 1. Standard

14 The ALJ was required to consider and evaluate the persuasiveness of the
15 medical opinions and prior administrative medical findings.⁵⁹ The factors for
16 evaluating the persuasiveness of medical opinions and prior administrative
17 medical findings include, but are not limited to, supportability, consistency,
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19 ⁵⁶ ECF No. 6.

20 ⁵⁷ *Id.*

21 ⁵⁸ ECF No. 10.

22 ⁵⁹ 20 C.F.R. § (b); 416.920c(a), (b).
23

1 relationship with the claimant, and specialization.⁶⁰ Supportability and consistency
2 are the most important factors,⁶¹ and the ALJ must explain how she considered the
3 supportability and consistency factors when reviewing the medical opinions and
4 support her explanation with substantial evidence.⁶² The ALJ may consider, but is
5 not required to discuss the following additional factors: the source's relationship to
6 Plaintiff such as length of the treatment, purpose of the treatment relation and
7 whether the source examined Plaintiff, as well as whether the source had advanced
8 training or experience to specialize in the area of medicine in which the opinion
9 was being given.⁶³ When considering the ALJ's findings, the Court is constrained to
10 the reasons and supporting explanation offered by the ALJ.⁶⁴

14 ⁶⁰ 20 C.F.R. § 416.920c(c)(1)–(5).

15 ⁶¹ *Id.* § 416.920c(b)(2).

16 ⁶² *Id.* § 416.920c(b)(2); *Woods v. Kijakazi*, 32 F.4th a at 785 (“The agency must
17 articulate . . . how persuasive it finds all of the medical opinions from each doctor
18 or other source and explain how it considered the supportability and consistency
19 factors in reaching these findings.”) (cleaned up).

20 ⁶³ *Id.*

21 ⁶⁴ *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (recognizing court
22 review is constrained to the reasons the ALJ gave).

2. Relevant Medical Evidence

Because Plaintiff argues that the ALJ failed to properly assess medical opinion evidence regarding mental impairments, the Court will only address the relevant evidence.

a. Dr. Metoyer

On August 15, 2021, Plaintiff was examined by Patrick Metoyer, PhD, at the request of the Commissioner.⁶⁵ Dr. Metoyer noted that Plaintiff's chief listed complaints were schizophrenia, dissociative identify disorder, bipolar disorder, depression, anxiety, learning disorders, ADHD, and fibromyalgia.⁶⁶ Dr. Metoyer stated that Plaintiff's ability to complete activities of daily living such as cooking, cleaning, shopping, and laundry are impacted by physical health, chronic pain, anxiety, PTSD, learning disorder, and gender dysphoria.⁶⁷ Plaintiff reported living with his aunt; having difficulty with personal care that included showering only once or a twice a week; difficulty with household chores and the need to pace himself; and difficulty managing finances.⁶⁸ Dr. Metoyer stated that he reviewed the following records: Catholic Charities of Yakima psychiatric evaluations dated July 20, 2020, and November 14, 2020; Yakima School District evaluation report

⁶⁵ AR 1621-1626.

⁶⁶ AR 1621.

⁶⁷ *Id.*

⁶⁸ *Id.*

1 dated October 25, 2018; medical records dated November 2020, December 2020,
2 and January 2021; and records from Comprehensive Health Care dated March 4,
3 2021; and June 7, 2021.⁶⁹

4 Plaintiff reported symptoms of anxiety including panic attacks; symptoms of
5 PTSD including nightmares, intrusive memories, hypervigilance, exaggerated
6 startle response, and detachment from others; symptoms of depression including
7 depressed mood, anhedonia, difficulty concentrating, fatigue, helplessness, and
8 hopelessness; a suicide attempt one year prior; a past history of ADHD and special
9 education services from elementary through high school; as well as symptoms of
10 gender dysphoria.⁷⁰ Plaintiff reported a worsening of anxiety, PTSD, mood
11 dysregulation and gender dysphoria in the last five years but no change in ADHD
12 or learning disorder.⁷¹

13 Plaintiff reported he is not currently taking psychotropic medication but was
14 in counseling; no psychiatric hospitalization; an increase in symptoms when in
15 pain or around others; a remote history of alcohol and prescription medication
16 abuse in remission for four years; current use of edible marijuana for sleep; and
17 physical symptoms including heat sensitivity, joint pain, fatigue and muscle pain
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19

20 ⁶⁹ AR 1622.

21 ⁷⁰ *Id.*

22 ⁷¹ *Id.*

1 due to fibromyalgia.⁷² Plaintiff reported that he was adopted and raised by his
2 paternal grandparents and completed to the ninth grade.⁷³ On mental status
3 examination, Plaintiff was well-groomed; was cooperative; reports his mood as
4 numb and irritable and had congruent affect; denied current suicidal ideation; had
5 non-pressured speech and goal directed thoughts; was oriented; had impaired
6 recall and memory; had normal fund of knowledge; had difficulty with tasks
7 requiring concentration; had impaired abstract thinking; had impaired judgment
8 and insight; and identified that his health issues impacted his day-to-day
9 functioning.⁷⁴

10 Dr. Metoyer diagnosed panic disorder; PTSD; major depressive disorder,
11 recurrent, moderate; ADHD; specific learning disorder, reading, writing, and math;
12 and gender dysphoria.⁷⁵ Dr. Metoyer opined that Plaintiff would require assistance
13 of a representative payee.⁷⁶ Dr. Metoyer opined that Plaintiff's ability to interact
14 with co-workers and the public is moderately impaired; his ability to maintain
15 regular attendance is moderately impaired; his ability to understand, remember,
16 and carry out complex instructions is moderately to markedly impaired; his ability

18 ⁷² AR 1623.

19 ⁷³ *Id.*

20 ⁷⁴ AR 1624-1625.

21 ⁷⁵ AR 1625.

22 ⁷⁶ *Id.*

1 to complete a normal work day or work week without interruption is moderately
2 impaired; and his ability to deal with stress in the workplace is moderately to
3 markedly impaired if it involves persistent activity interacting with other
4 individuals.⁷⁷

5 *b. Dr. Brown*

6 On August 30, 2021, Plaintiff's file was reviewed at the initial stage by state
7 agency consultant Michael Brown, PhD.⁷⁸ Dr. Brown opined that Plaintiff had
8 medically determinable impairments present that did not meet listings 12.04,
9 12.06, 12.08, 12.11, and 12.15.⁷⁹ Dr. Brown opined that Plaintiff had a moderate
10 limitation in the following 4 functional areas: understand, remember, or apply
11 information; interact with others; concentrate, persist, or maintain pace; and adapt
12 or manage oneself.⁸⁰ Dr. Brown explained that a consultative examiner had
13 diagnosed Plaintiff with panic disorder; PTSD; learning disability; major
14 depressive disorder, recurrent, moderate; ADHD; and gender dysphoria.⁸¹
15 Dr. Brown further opined that Plaintiff would have a moderate limitation in the
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18 ⁷⁷ AR 1625-1626.

19 ⁷⁸ AR 148.

20 ⁷⁹ AR 147.

21 ⁸⁰ *Id.*

22 ⁸¹ *Id.*

1 ability to understand and remember detailed instructions.⁸² Dr. Brown explained
2 that Plaintiff had a history of special education services discontinued in 2018, and
3 that current mental status examinations showed mild cognitive and memory
4 limits.⁸³ Dr. Brown opined that Plaintiff would be moderately limited in the ability
5 to: carry out detailed instructions; maintain attention and concentration for
6 extended periods; perform within a schedule, maintain attendance; and be
7 punctual; and complete a normal work day or work week without interruption from
8 psychological symptoms and perform at a consistent pace.⁸⁴ Dr. Brown explained
9 that Plaintiff's fibromyalgia symptoms and somatic focus on pain would affect
10 concentration but that he remained capable of completing simple tasks in a 40 hour
11 week with customary breaks.⁸⁵ Dr. Brown opined that Plaintiff is moderately
12 limited in the ability to interact with the general public; and the ability to maintain
13 appropriate behavior and adhere to standards of neatness and cleanliness.⁸⁶
14 Dr. Brown explained that Plaintiff could accept supervision and interact on a
15 superficial basis with the general public and coworkers.⁸⁷ Dr. Brown also opined
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17 ⁸² AR 150.

18 ⁸³ *Id.*

19 ⁸⁴ AR 151.

20 ⁸⁵ *Id.*

21 ⁸⁶ *Id.*

22 ⁸⁷ *Id.*

1 that Plaintiff was moderately limited in the ability to respond appropriately to
2 changes in the work setting and explained that he could adjust to work changes
3 found in simple tasks.⁸⁸

4 *c. Dr. Eisenhower*

5 On January 12, 2022, Plaintiff's file was reviewed at the reconsideration
6 stage by state agency consultant Renee Eisenhower, PhD.⁸⁹ Dr. Eisenhower opined
7 that Plaintiff had medically determinable impairments present that did not meet
8 listings 12.04, 12.06, 12.11, and 12.15.⁹⁰ Dr. Eisenhower opined that Plaintiff had a
9 moderate limitation in the following 4 functional areas: understand, remember, or
10 apply information; interact with others; concentrate, persist, or maintain pace; and
11 adapt or manage oneself.⁹¹ Dr. Eisenhower adopted the RFC findings of
12 Dr. Brown.⁹² Dr. Eisenhower provided the same narrative explanation given by Dr.
13 Brown as to the interference of Plaintiff's somatic complaints on his ability to
14 concentrate and the ability to interact with others on a superficial basis.⁹³

17 ⁸⁸ *Id.*

18 ⁸⁹ AR 158, 171.

19 ⁹⁰ *Id.*

20 ⁹¹ AR 157, 170.

21 ⁹² AR 160-161, 173-174.

22 ⁹³ *Id.*

1 3. Analysis

2 Plaintiff argues that the ALJ erred by finding the opinions of Dr. Metoyer to
3 be persuasive and but not providing for the opined moderate limitation in
4 maintaining attendance in the RFC and containing a provision in the RFC limiting
5 Plaintiff to occasional contact with others to satisfy the opined limitation in dealing
6 with stress when in persistent contact with others. The Court agrees with Plaintiff
7 as to the former but disagrees as to the latter. Additionally, Plaintiff argues that
8 the ALJ failed to articulate her consideration of the supportability of Dr. Brown
9 and Dr. Eisenhower's opinions. The Commissioner asserts that the ALJ met her
10 burden by simply stating that Dr. Brown and Dr. Eisenhower's opinions were
11 supported by their review of the record. The Court disagrees with the
12 Commissioner.

13 a. The ALJ's consideration of Dr. Metoyer's opinions

14 The ALJ's articulated her consideration of Dr. Metoyer's opinions as follows:

15 Dr. Metoyer's opinion is also persuasive. He opined that the claimant
16 has the ability to reason and understand and has some adaptation
17 skills. "His ability to interact with coworkers and the public is likely
18 moderately impaired due to anxiety, PTSD, mood symptoms, ADHD,
19 learning disorder symptoms, and gender dysphoria symptoms, and
20 tendency to isolate himself from others. His ability to maintain
21 regular attendance in the workplace is moderately impaired. The
22 claimant's ability to understand, remember and carry out complex
23 instructions is moderately to markedly impaired. His ability to
complete a normal workday or work week without interruption from
anxiety, PTSD, mood symptoms, ADHD, learning disorder symptoms,
and gender dysphoria symptoms is likely moderately impaired." In
other words, the claimant is limited to simple tasks and has moderate
limitations in interacting with others, maintaining regular attendance
in the workplace, and completing a normal workday or workweek.
These limitations are supported by Dr. Metoyer's thorough review of

1 the record, medical expertise, and familiarity with the Social Security
2 regulations and they are consistent with the medical evidence of
3 record since August 2021. Dr. Metoyer also opined, “His ability to deal
4 with the usual stress encountered in the workplace is moderately to
5 markedly impaired *if it involves persistent activity interacting with*
6 *other individuals*” (emphasis added). Moderate limitations in this area
7 are supported as noted above and are also consistent with the medical
8 evidence of record. A marked degree of limitation in this area is not
9 adopted, however, as the residual functional capacity finding accounts
10 for this by limiting the claimant to only occasional interaction with
11 coworkers and the public. Dr. Metoyer opinion is also consistent with
12 the opinion of Dr. Brown and Dr. Eisenhower (above). Thus, the above
13 residual functional capacity finding includes limitations that
14 encompass the opinion of Dr. Metoyer.⁹⁴

15 Plaintiff is correct that the ALJ accepted Dr. Metoyer’s opinions overall as
16 persuasive and was then obliged to provide for those opined limitations in the RFC.
17 “[T]he ALJ is responsible for translating and incorporating clinical findings into a
18 succinct RFC.”⁹⁵ However, when incorporating a credited medical opinion, the
19 ALJ’s findings need only be consistent with the opined limitations, not identical to
20 them.⁹⁶ It is error for an ALJ to simultaneously claim to incorporate a medical
21 opinion and yet, without explanation, omit relevant limitations set forth in that
22 medical opinion.⁹⁷

23 ⁹⁴ AR 45-46.

⁹⁵ *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015).

⁹⁶ *Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1271, 1223 (9th Cir. 2010).

⁹⁷ See SSR 96-8p, 1996 WL 374184 at *7 (Jul. 2, 1996).

1 The Court notes, however, that the ALJ clearly articulated that she was not
2 accepting Dr. Metoyer’s opined limitation of marked disability with “persistent
3 activity interacting with other individuals” because she was limiting Plaintiff to
4 occasional interaction with others. Here, the ALJ expressly stated her reasoning.
5 Moreover, the ALJ went on to reference the opinions of Dr. Brown and
6 Dr. Eisenhauer. Both Dr. Brown and Dr. Eisenhauer agreed with Dr. Metoyer as
7 to a limitation in interacting with others and opined that interaction with others
8 should be “superficial.”

9 The Court agrees with the Commissioner that the plain meaning of the term
10 persistent is synonymous with continuous. While persistent is not a word
11 commonly used in vocational terms, continuous is clearly in contradiction to
12 occasional. Moreover, the ALJ articulated the limitation to occasional contact was
13 formulated to accommodate the limitation to superficial contact with others to
14 which Dr. Brown and Dr. Eisenhauer both opined and which the ALJ found
15 persuasive without exception. Specifically, the Ninth Circuit held that an ALJ did
16 not err in providing that a plaintiff, who medical sources opined was moderately
17 limited in his ability to interact with others and who was able to “relate to others
18 on a superficial work basis,” was capable of “occasional” interaction with
19 coworkers.⁹⁸

22 ⁹⁸ *Shaibi v Berryhill*, 883 F.3d 1102, 1106-1107 (9th Cir. 2017).

1 The Court concludes that the ALJ did not err in providing a limitation in the
2 RFC that Plaintiff was limited to occasional contact with others to account for
3 Dr. Metoyer's opined limitation in dealing with stress if required to have persistent
4 contact with others. The Court cannot find any similar provision articulated by the
5 ALJ to account for Dr. Metoyer's opined limitation that Plaintiff has a moderate
6 limitation in maintaining attendance. This failure is compounded by the fact that
7 Dr. Brown and Dr. Eisenhower also opined that Plaintiff would have a moderate
8 limitation in maintaining attendance.⁹⁹ The Commissioner argues that because
9 Dr. Brown and Dr. Eisenhower stated that Plaintiff could complete simple work
10 tasks for a 40-hour work week with customary breaks and rest periods, the ALJ
11 was not required to consider Plaintiff's limitations in maintaining attendance.¹⁰⁰
12 The Court disagrees. Dr. Brown and Dr. Eisenhower's statements regarding the
13 ability to complete simple tasks for a 40-hour week adequately accounts for their
14 opined moderate limitations in the ability to maintain attention and concentration,
15 and to perform at a consistent pace without unreasonable rest periods. But the
16 statement relied on by the Commissioner does not appear to properly account for
17 limitations in attendance and punctuality, as those functions are not directly
18 affected by the complexity of the tasks to be performed. As such, the
19 Commissioner's reliance is misplaced.

20
21 ⁹⁹ AR 151, 160-161, 173-174.

22 ¹⁰⁰ ECF No. 10, citing to AR 151, 161, 173.

1 Because it is unclear that the ALJ properly accounted for moderate
 2 limitations in maintaining attendance and punctuality in the RFC, despite the fact
 3 that the limitation was opined to by all medical opinion sources, remand is
 4 warranted.

5 *b. The ALJ's consideration of Dr. Brown and Dr. Eisenhower*

6 The ALJ's articulated her consideration of the opinions of Dr. Brown and
 7 Dr. Eisenhower in one single paragraph, stating:

8 With regard to mental functioning, State agency psychological
 9 physicians, Michael Brown, Ph.D. (Exhibit B7A) and Renee
 10 Eisenhower, Ph.D. (Exhibits B8A; B10A) opined that the claimant can
 11 understand and remember at least simple work tasks and
 12 instructions. Although his symptoms and somatic focus on pain will
 13 cause occasional wane in attention and concentration at times, he
 14 remains capable of consistently completing at least simple work tasks
 15 and instructions for a 40-hour workweek with /customary breaks and
 16 rest periods. He is capable of accepting supervision and can interact
 17 on a superficial basis with the general public and coworkers. He can
 18 adjust to work changes found within simple work tasks. This opinion
 19 is persuasive. It is supported by Dr. Brown's and Dr. Eisenhower's
 20 thorough review of the record, medical expertise, and familiarity with
 21 the Social Security regulations. It is consistent with the counseling
 22 record and grossly normal mental status examinations (See e.g.,
 23 Exhibits B14F/4-5; B20F/4-5; B26F/3-5, 23-25; B28F/11, 35, 90, 118;
 B29F/7), as discussed above. It is also consistent with the opinion of
 Dr. Metoyer (Exhibit B20F), discussed below. Thus, the above residual
 functional capacity finding includes limitations that encompass the
 opinions of Dr. Brown and Dr. Eisenhower.¹⁰¹

19 The Court concludes that in the one paragraph analysis, the ALJ fails to
 20 consider the supportability factor in any meaningful manner. The regulations are

22 ¹⁰¹ AR 45.

1 clear that the ALJ is required to consider and articulate her reasoning both as to
2 the supportability factor *and* the consistency factor.¹⁰² The regulations are clear
3 that a proper and thorough analysis of one of the two factors is not enough to
4 overcome the failure to address the second.

5 Here, the ALJ only makes a cursory statement that Dr. Brown and
6 Dr. Eisenhower thoroughly reviewed the record. While the Commissioner avers
7 that this vague, cursory statement satisfies the ALJ's duty to articulate, it does
8 not. Just as the Court would not and could not accept a vague, cursory statement
9 that a consultative or treating physician's opinion was based on a thorough
10 examination, the Court cannot accept the ALJ's reasoning here. The regulations
11 require that the ALJ adequately explain what specific findings made by the opinion
12 source support their opinions. Notably, both Dr. Brown and Dr. Eisenhower's
13 reports contained lengthy narrative explanations that indeed might have
14 supported their opinions. But the ALJ gave no such analysis and merely stated
15 that they reviewed the record.

16 The reasons that the ALJ articulated as to the supportability factor were not
17 "good reasons" to discount the medical opinions. The Court concludes that remand
18 is warranted for the ALJ to properly consider the medical opinion evidence both as
19 to the supportability factor and as to the consistency of the medical opinions.

22 ¹⁰² 20 C.F.R. § 416.920c(b)(2); *Woods v. Kijakazi*, 32 F.4th a at 785.

1 4. Summary

2 Because the ALJ failed to properly consider the medical opinion evidence
3 and failed to account for the opined limitation of moderate limitation in the ability
4 to maintain attendance and punctuality, a remand for further proceedings is
5 warranted.

6 **C. Plaintiff's Subjective Complaints: The Court finds the issue moot.**

7 Plaintiff argues the ALJ failed to properly evaluate his testimony. As
8 discussed above, the ALJ failed to properly consider the medical opinion evidence.
9 Because the Court has remanded the case for consideration of the record as a
10 whole, the Court finds this issue is moot.

11 **D. Remand for Further Proceedings**

12 Plaintiff submits a remand for payment of benefits is warranted. The
13 decision whether to remand a case for additional evidence, or simply to award
14 benefits, is within the discretion of the court.”¹⁰³ When the court reverses an ALJ's
15 decision for error, the court “ordinarily must remand to the agency for further
16 proceedings.”¹⁰⁴

19 ¹⁰³ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,
20 761 F.2d 530 (9th Cir. 1985)).

21 ¹⁰⁴ *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595
22 (“[T]he proper course, except in rare circumstances, is to remand to the agency for
23

1 The Court finds that further development is necessary for a proper disability
 2 determination. The ALJ should articulate her reasoning at step two/three
 3 regarding the Psychiatric Review Technique, consider the medical opinions as to
 4 both the factors of consistency and supportability, and make findings at each of the
 5 five steps of the sequential evaluation process.

6 IV. CONCLUSION

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. The ALJ's nondisability decision is **REVERSED**, and this matter is
 9 **REMANDED** to the Commissioner of Social Security for further
 10 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).
- 11 2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 6 and**
 12 **10**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

13 IT IS SO ORDERED. The Clerk's Office is directed to file this order and
 14 provide copies to all counsel.

15 DATED this 14th day of August, 2024.

16 

17 _____
 EDWARD F. SHEA
 Senior United States District Judge

18
 19
 20
 21 _____
 22 additional investigation or explanation"); *Treichler v. Comm'r of Soc. Sec. Admin.*,
 23 775 F.3d 1090, 1099 (9th Cir. 2014).